

A. G. Contract No. KR-89-0393
ECS File: IGA-88-05
Project: H2045 01C
Section: Salt River Channel
IGA F&D 87053

52684

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA,
THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY
and THE CITY OF PHOENIX

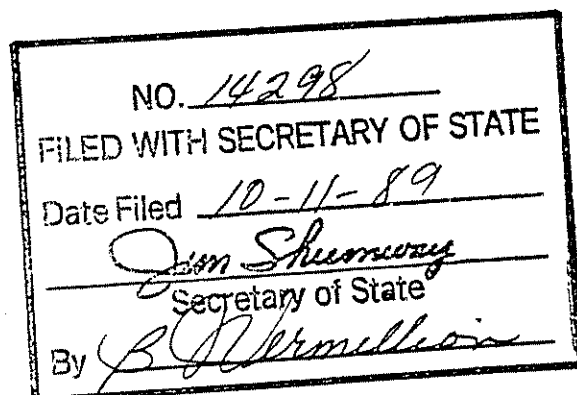
THIS AGREEMENT is entered into 11 OCTOBER, 1989,
between the STATE OF ARIZONA, acting by and through its
DEPARTMENT OF TRANSPORTATION (the "STATE"), the FLOOD CONTROL
DISTRICT OF MARICOPA COUNTY, a municipal corporation and
political subdivision of the State of Arizona (the "DISTRICT"),
and the CITY OF PHOENIX, acting by and through its City Council
("PHOENIX").

I. RECITALS

1. The STATE is empowered by Arizona Revised Statutes
Sections 11-952 and 28-108 to enter into this agreement and has
by resolution, a copy of which is attached hereto and made a
part hereof, resolved to enter into this agreement and has
delegated to the undersigned the authority to execute this
agreement on behalf of the STATE.

2. The DISTRICT is empowered by Arizona Revised Statutes
Section 48-3603 to enter into this agreement and has authorized
the undersigned to execute this agreement on behalf of the
DISTRICT.

3. PHOENIX is empowered by Arizona Revised Statutes
Section 48-572 and by Chapter 2, Section 2 of its City Charter
to enter into this agreement and has by formal action, a copy
of which is attached hereto and made a part hereof, resolved to
enter into this agreement and has authorized the undersigned to
execute same on behalf of PHOENIX.



4. The STATE, DISTRICT and PHOENIX affirm that channelization of the Salt River from the area of 40th Street eastward to approximately the Southern Pacific Railroad (SPRR) Bridge near Mill Avenue is the desired alternative to protect the proposed East Papago, Hohokam and Sky Harbor Access roadways.

5. The STATE is proceeding with the planning, design and construction of the East Papago, Hohokam and Sky Harbor Access roadways all of which cross or are adjacent to the Salt River. The STATE has selected alignments for these roadways that require channelization of the Salt River from the area of 40th Street (Extended) to approximately the SPRR Bridge near Mill Avenue as described on Exhibit "A". The STATE selected these alignments based on commitments from the DISTRICT to maintain the River Channel and commitments from PHOENIX, TEMPE and SRP to grant rights of way for channel and/or roadway construction.

6. Based on geotechnical analysis by the STATE, no known landfill deposits are within the rights of way proposed for Channel construction.

7. It is understood by all parties that the DISTRICT shall not assume now or in the future any costs for maintenance of any facilities within the Channel rights-of-way that are not directly related to the Flood Control functioning or operation of the Channel. The DISTRICT shall be solely responsible for determining what facilities it will be required to maintain when it assumes operation and maintenance of the Channel.

8. The purposes of this agreement are to define the responsibilities for design, construction, operation and maintenance of the Salt River Channel between the STATE, the DISTRICT, and PHOENIX and to establish adequate rights of way for the Channel and the East Papago, Hohokam and Sky Harbor Access roadways.

9. Additional separate agreements between the STATE, DISTRICT, SRP and the City of TEMPE will further define responsibilities for design, construction, operation, and maintenance of other portions of the Salt River Channel, and provide additional right of way for the channel.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF RESPONSIBILITIES

A. Salt River Channel

The STATE shall:

1. In conjunction with design and construction of the East Papago, Hohokam and Sky Harbor Access roadways, obtain design and construction plans in accordance with design and construction criteria provided by the DISTRICT.

a. Provide the DISTRICT and PHOENIX with preliminary plans and specifications for the Channel prior to finalization, for their review and comment.

b. Provide the DISTRICT and PHOENIX with final plans and specifications for the Channel prior to advertisement of the construction contract for review and approval.

c. Bear the total cost of said channel design and construction, estimated to be \$23,500,000.

d. Obtain all state, federal or local environmental discharge or other flood and regulatory permits required for the construction of the Channel.

2. Upon completion of Channel, grant the DISTRICT a perpetual easement for drainage in the STATE's right of way through SR 143 and SR 153, and for use of the STATE rights of way for the DISTRICT's maintenance purposes.

3. Be responsible for the operation, maintenance, and the repair of all STATE roadways, and roadway bridges, superstructures, substructures, wingwalls, and approaches to the bridges that are constructed within the Channel.

The DISTRICT shall:

1. Monitor construction of the Channel. The DISTRICT shall inspect and approve the completed facility.

2. At its own cost, operate and maintain the Salt River Channel after it is constructed and any necessary easements for maintenance purposes have been transferred to the DISTRICT.

a. Maintain the Channel in such a manner so as not to endanger the Channel bridges, If the DISTRICT does not so maintain the Channel, the STATE shall notify the DISTRICT,

who shall perform the necessary maintenance within thirty days from notification. If the DISTRICT fails to perform the maintenance within thirty days following notification, the STATE may perform the necessary maintenance, and the DISTRICT shall promptly reimburse the STATE for actual costs incurred.

b. Not be responsible for operation and maintenance of any landscaping or aesthetic features which may be installed as part of the Channel construction.

c. Reserve the right to approve the design and construction of any future changes to, or improvements on, the Salt River Channel.

3. Approve final plans and specifications for the Salt River Channel work.

a. Submit their comments to the STATE within 30 days of receipt of plans and specifications.

b. Have 30 days in which to submit their approval to the STATE or notify the STATE of their concerns. In the event no response is received by the STATE within 30 days, it shall be deemed approved by the DISTRICT.

The CITY OF PHOENIX shall:

1. Monitor construction of the Channel and shall inspect and approve the completed facility.

2. Grant to the STATE the right to enter upon lands owned by PHOENIX for the purpose of constructing the Salt River Channel and levees per approved plans. This right to enter shall expire upon completion of the Channel construction.

3. Grant the DISTRICT a perpetual and assignable easement to operate and maintain the Salt River Channel and to occasionally overflow, flood and submerge the lands within the banks of the Salt River Channel and all future improvements thereon, if any, upon completion of Channel construction within its ownership.

4. Not permit any mining or excavation to occur in or adjacent to the Channel without first reviewing the permit application with the DISTRICT and receiving the DISTRICT'S written concurrence.

5. Approve the final plans and specifications for the Salt River Channelization work.

a. Within 30 days of receipt of plans and specifications, submit their comments to the STATE.

b. Within 30 days of receipt of final plans and specifications, submit their approval to the STATE or notify the STATE of their concerns. In the event no response is received by the STATE within 30 days, it shall be deemed approved by PHOENIX.

6. Provide a flood plain use permit to the STATE for the construction of the Channel.

7. At its own expense, shall operate and maintain, within the Salt River Channel landscaping or other aesthetic features that will not be maintained by the DISTRICT.

B. East Papago, Hohokam and Sky Harbor Access Roadways

The STATE shall:

1. Design the Hohokam and Sky Harbor Access roadways to include such facilities required by Phoenix for future street connections to the State roadways at Sky Harbor Boulevard and Air Lane, as shown on the Exhibit "B".

2. At its own cost, construct, operate, and maintain all State roadways, bridges, superstructures, substructures, wingwalls and bridge approaches associated with the East Papago, Hohokam and Sky Harbor Access roadways.

The CITY OF PHOENIX shall:

1. At its own cost, provide any additional rights of way required by STATE to provide such additional facilities.

2. At its own expense maintain said city street connections upon completion of construction. Maintenance limits are shown on the Exhibit "B".

3. Retain existing prior rights for utilities that cross the STATE dedicated right-of-way. This includes the right to install, operate, maintain, and replace utility lines. Access to be subject to STATE permit process.

4. Convey fee title to the STATE for those lands owned by PHOENIX which are required for the East Papago, Hohokam and Sky Harbor Access roadways in exchange for the STATE conveying fee title to PHOENIX for rights of way that are presently reserved for the Hohokam Freeway and which are in excess of the rights of way required for new STATE highways in this area (see attached Exhibit "C").

a. Based on the STATE's appraised value of PHOENIX land and improvements required for said roadways, a sufficient area of excess right of way shall be conveyed to PHOENIX to equal the value of PHOENIX's land and improvements. The appraisal to be done by independent appraiser acceptable to both PHOENIX and the STATE.

b. In the event the value of the PHOENIX land and improvements exceeds the value of excess right of way available for exchange, PHOENIX herein agrees to waive the difference.

III. MISCELLANEOUS PROVISIONS

1. The DISTRICT agrees to indemnify and save harmless the STATE and PHOENIX or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity condition or event arising out of the performance or non-performance by the DISTRICT of any of the provisions of this Agreement. The STATE and PHOENIX shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to, or death of persons, or damages to or destruction of property arising out of, or in any way connected with the DISTRICT's performance or non-performance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of the STATE or PHOENIX. The above cost of damages incurred by the STATE or PHOENIX or any of their departments, agencies, officers or employees, shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

2. The STATE agrees to indemnify and save harmless the DISTRICT and PHOENIX or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the STATE of any of the provisions of this Agreement. The DISTRICT and PHOENIX shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to, or death of persons, or damages to or destruction of property arising out of or in any way connected with the STATE's performance or non-performance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of the DISTRICT or PHOENIX. The above cost of damages incurred by the DISTRICT or PHOENIX or any of their departments, agencies, officers or employees, shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

3. PHOENIX agrees to indemnify and save harmless the DISTRICT and the STATE or any of their departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by PHOENIX of any of the provisions of this Agreement. The DISTRICT and the STATE shall in all instances be indemnified against all liability, losses and damages of any nature for or on account of any injuries to, or death of persons, or damages to or destruction of property arising out of or in any way connected with PHOENIX's performance or non-performance of this Agreement, except such injury or damage as shall have been occasioned by the negligence of the DISTRICT or the STATE. The above cost of damages incurred by the DISTRICT or the STATE or any of their departments, agencies, officers or employees, shall include in the event of an action, court costs, expenses for litigation and reasonable attorney's fees.

4. This Agreement shall remain in force and effect as long as the roadways are part of the State Highway System unless modified or terminated by written agreement of all parties.

5. This Agreement shall become effective upon filing with the Secretary of State.

6. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

7. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

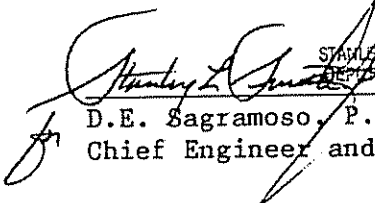
8. In the event of any controversy which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518(B) and (C).

9. Attached hereto and incorporated herein by reference is a copy of the written determination of each party's legal counsel that the parties are authorized under the laws of this STATE to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement
the day and year first above written.

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

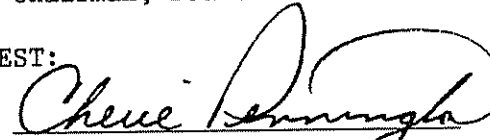
RECOMMENDED BY:

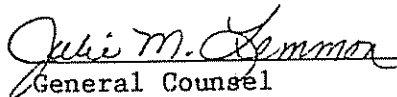
 STANLEY L. SMITH JR., P.E.
DEPUTY CHIEF ENGINEER 5/18/89
D.E. Sagramoso, P.E. Date
Chief Engineer and General Manager

APPROVED AND ACCEPTED:

By: 
Chairman, Board of Directors


ATTEST:

By: 
Clerk of the Board Date


 5/23/89
General Counsel Date

CITY OF PHOENIX

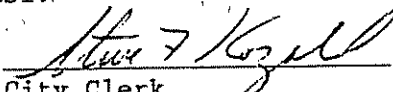
Marvin A. Andrews
City Manager

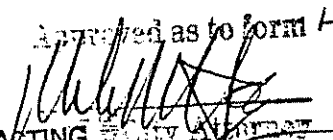
By: 
James Matteson
Street Transportation
Director

STATE OF ARIZONA
Department of Transportation

By: 
For GARY K. ROBINSON
Chief Deputy State Engineer

ATTEST:

By: 
City Clerk
ACTING

Approved as to form

ACTING CITY CLERK


Commission Expires

1661j

RESOLUTION

BE IT RESOLVED on this 4th day of January 1989, that I, CHARLES L. MILLER, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Highways Division, to enter into an agreement with the City of Phoenix and Maricopa County Flood Control District for the purpose of the channelization of the Salt River.

THEREFORE, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted for approval and execution by the Chief Deputy State Engineer.


CHARLES L. MILLER, Director
Arizona Department of
Transportation

1204j

88-05

County of Maricopa

State of Arizona

Office of the Clerk

State of Arizona }
County of Maricopa } ss.

I, *Cherie Pennington*, Clerk of the Board of Supervisors
do hereby Certify That the attached is a true and correct extract
from the minutes of the Board of Directors' of the Flood Control District meeting
held April 17, 1989:

CHAIRMAN AUTHORIZED TO SIGN INTERGOVERNMENTAL AGREEMENTS WITH THE
ARIZONA DEPARTMENT OF TRANSPORTATION, THE SALT RIVER PROJECT, THE
CITY OF TEMPE, AND THE CITY OF PHOENIX APPROVED:

Motion was made by Supervisor Freestone and unanimously carried to
approve and authorize the Chairman of the Board to sign Intergovernmental
Agreements FCD 87051, FCD 87052, and FCD 87053 with the Arizona Department
of Transportation, the Salt River Project, the City of Tempe and the City
of Phoenix, respectively, for the design, construction, operation and
maintenance of the Salt River Channel between 40th Street and Mill Avenue.

In Witness Whereof, I have hereunto set
my hand and affixed the Official Seal of the Board
of Supervisors. Done at Phoenix, the County Seat
this 27th day of April, 1989

A.D.

Cherie Pennington

Clerk of the Board of Supervisors

✓ Flood Control
File

RESOLUTION NO. 17474

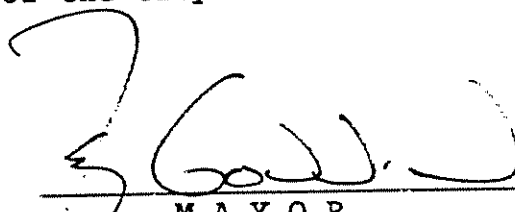
AN RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE FLOOD CONTROL DISTRICT OF MARICOPA COUNTY FOR PURPOSES OF DESIGNING, CONSTRUCTION AND MAINTENANCE OF THE CHANNELIZED SALT RIVER FROM 40TH STREET TO MILL AVENUE; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF PHOENIX as follows:


SECTION 1. That the City Manager be, and he is hereby, authorized to enter into an agreement with the Arizona Department of Transportation and the Flood Control District of Maricopa County, Arizona, said agreement to define the rights and responsibilities associated with the design, construction and maintenance of the channelized Salt River from 40th Street to Mill Avenue.

SECTION 2. WHEREAS, the immediate operation of the provisions of this resolution is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage by the Council as required by the City Charter and is hereby exempted from the referendum clause of said Charter.

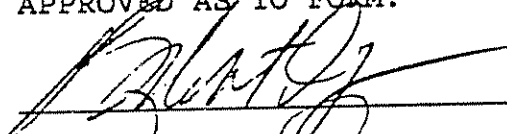
PASSED by the Council of the City of Phoenix this 3
day of MAY, 1989.


MAYOR

ATTEST:



City Clerk

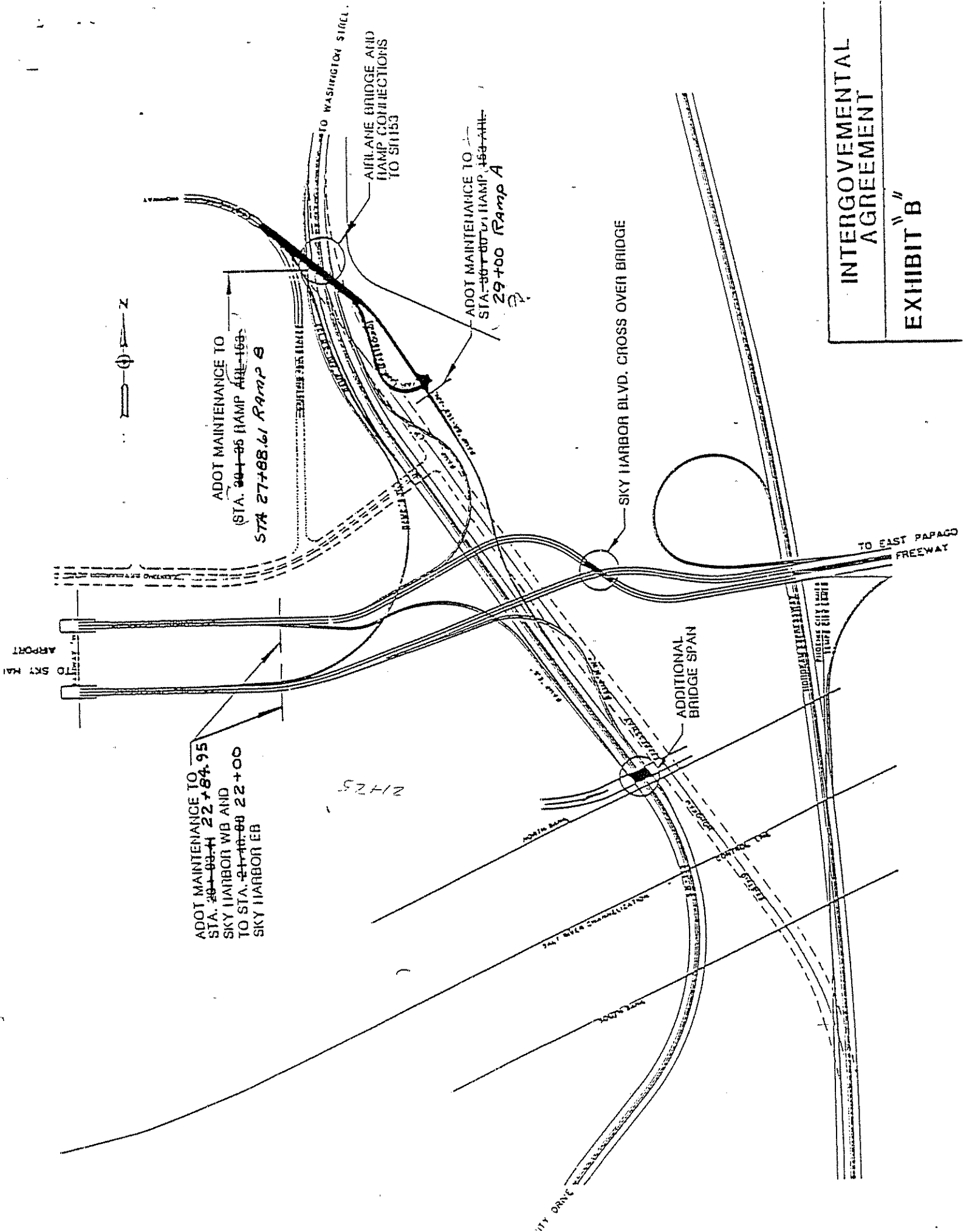
APPROVED AS TO FORM:


ACTING
City Attorney

REVIEWED BY:

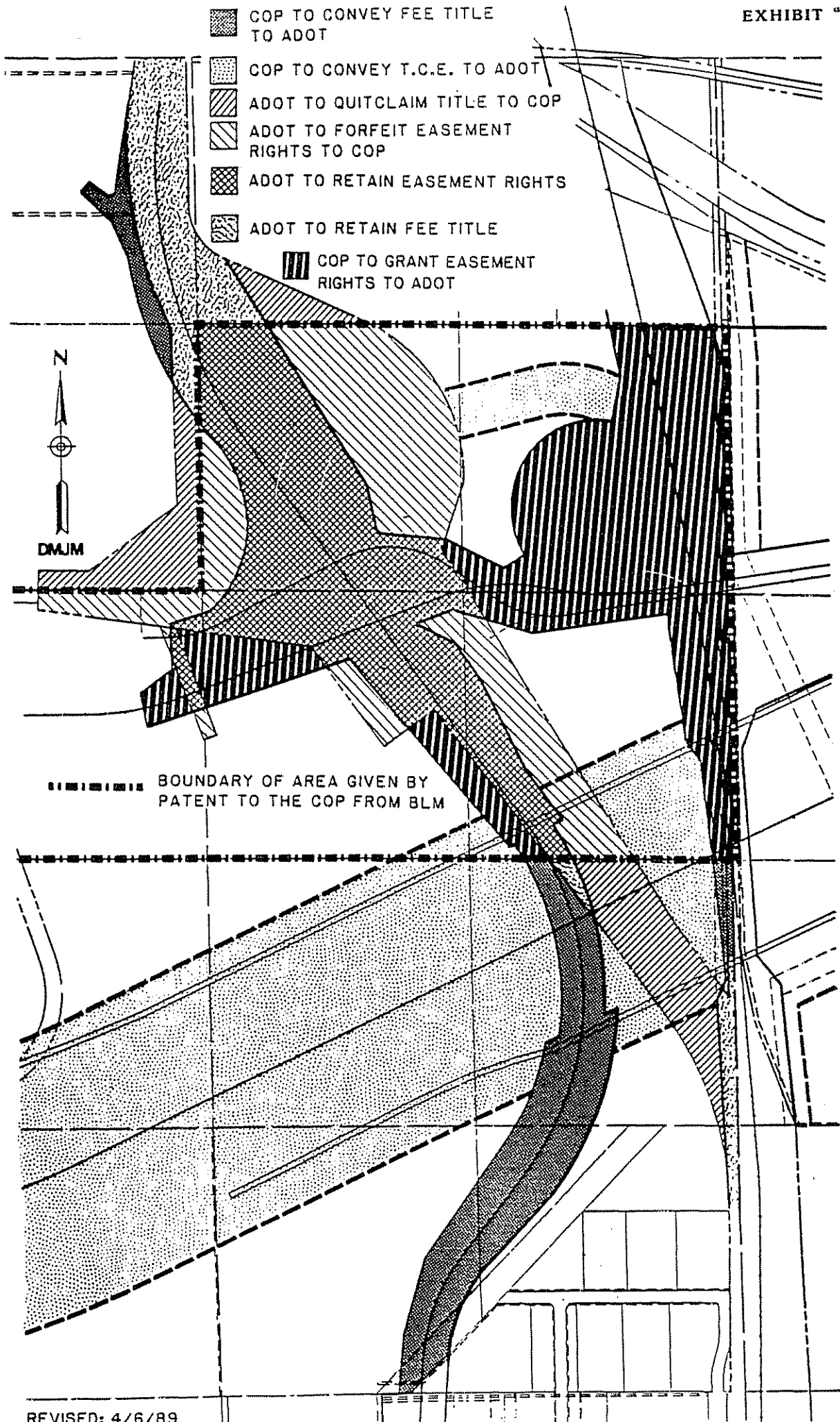

ASSISTANT
City Manager


BPM/rc/0292B
4/10/89



INTERGOVERNMENTAL
AGREEMENT

EXHIBIT "B"



APPROVAL OF THE CITY ATTORNEY

I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF PHOENIX and declare this agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona.

DATED this 26th day of June, 1989.

RODERICK G. McDOUGALL
City Attorney

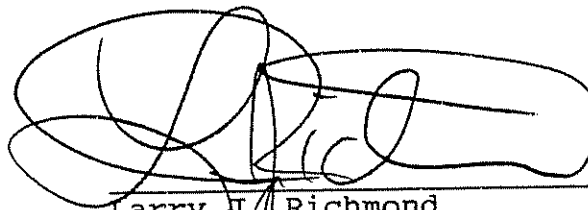
by

[Signature]
Acting City Attorney

APPROVAL OF THE GENERAL COUNSEL
FOR THE FLOOD CONTROL DISTRICT
OF MARICOPA COUNTY

I have reviewed the proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY and declare this agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona to the FLOOD CONTROL DISTRICT OF MARICOPA COUNTY.

DATED this 28th day of June, 1989.

A large, stylized handwritten signature in black ink, appearing to read 'Larry J. Richmond', is written over a horizontal line.

Larry J. Richmond
General Counsel
FLOOD CONTROL DISTRICT
OF MARICOPA COUNTY

Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR-89-0393, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 16th day of June, 1989.

ROBERT K. CORBIN
Attorney General

Albert Morgan
Assistant Attorney General
Transportation Division

0635G

AGREEMENT DISTRIBUTION CHECKLIST

DRAFT

FINAL

1989

DISTRIBUTED TO:

DATE

PROJECT MONITOR

Jerry Bourland

13 OCT

-

ATTORNEY GENERAL

DISTRICT ENGINEER (100D)

Joe Duvits

Don Lance, Don Lehman

Craig Arnwell

13 OCT

-

CONTRACTS & SPECS (121F)

13 OCT

-

RIGHT OF WAY (330E)

13 OCT

ACCOUNTS RECEIVABLE (204B)

13 OCT

-

HIGHWAY PLANS (108E)

STRUCTURES (280E)

UTILITIES & RR ENGINEER (248E)

LOCAL AGENCY

13 OCT

-

FILE

13 OCT

-